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5 IN THE UNITED STATES DISTRICT COURT
6
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA
8

9 LANITA DAVIS,

No. C 18-1121 WHA (PR)

10 Petitioner,

**ORDER TO SHOW CAUSE;
GRANTING LEAVE TO PROCEED
IN FORMA PAUPERIS**

11 v.

12 DOLLING,

13 Respondent.
14 /

15 **INTRODUCTION**

16 Petitioner, a California probationer, filed this pro se petition for a writ of habeas corpus
17 pursuant to 28 U.S.C. 2254 challenging her conviction in state court for possession of controlled
18 substances. For the reasons discussed below, respondent is ordered to show cause why the
19 petition should not be granted.
20

21 **STATEMENT**

22 Petitioner was convicted in Contra Costa County Superior Court in 2014 of possession
23 of a controlled substance. She received a sentence of five years of probation. The California
24 Court of Appeal affirmed the judgment, and the California Supreme Court denied a petitioner for
25 review. The instant petition followed.

26 **ANALYSIS**

27 **A. STANDARD OF REVIEW**

28 This court may entertain a petition for writ of habeas corpus "in behalf of a person in
custody pursuant to the judgment of a State court only on the ground that he is in custody in
violation of the Constitution or laws or treaties of the United States." 28 U.S.C. 2254(a); *Rose*

1 *v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet heightened pleading
2 requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An application for a federal writ
3 of habeas corpus filed by a prisoner who is in state custody pursuant to a judgment of a state
4 court must “specify all the grounds for relief which are available to the petitioner ... and shall set
5 forth in summary form the facts supporting each of the grounds thus specified.” Rule 2(c) of the
6 Rules Governing Section 2254 Cases, 28 U.S.C. foll. 2254. “[N]otice’ pleading is not
7 sufficient, for the petition is expected to state facts that point to a ‘real possibility of
8 constitutional error.’” Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d
9 688, 689 (1st Cir. 1970)).

10 **B. LEGAL CLAIMS**

11 Petitioner claims that: (1) there was insufficient evidence that the pills found in her
12 possession were a controlled substance; and (2) hearsay evidence was admitted from a website in
13 violation of her rights under the Confrontation Clause. These claims are cognizable and warrant
14 a response.

15 **CONCLUSION**

16 1. The clerk shall mail a copy of this order and the petition with all attachments to the
17 respondent and the respondent's attorney, the Attorney General of the State of California. The
18 clerk shall also serve a copy of this order on the petitioner.

19 2. Respondent shall file with the court and serve on petitioner, within **sixty-three (63)**
20 **days** of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules
21 Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be
22 granted based on the claim found cognizable herein. Respondent shall file with the answer and
23 serve on petitioner a copy of all portions of the state prison disciplinary proceedings that are
24 relevant to a determination of the issues presented by the petition.

25 If petitioner wishes to respond to the answer, she shall do so by filing a traverse with the
26 court and serving it on respondent within **twenty-eight days** of the date the answer is filed.

27 3. Respondent may file, within **sixty-three (63) days**, a motion to dismiss on procedural
28 grounds in lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the

1 Rules Governing Section 2254 Cases. If respondent files such a motion, petitioner shall file with
2 the court and serve on respondent an opposition or statement of non-opposition within **twenty-**
3 **eight days** of the date the motion is filed, and respondent shall file with the court and serve on
4 petitioner a reply within **fourteen days** of the date any opposition is filed.

5 4. Petitioner is reminded that all communications with the court must be served on
6 respondent by mailing a true copy of the document to respondent's counsel. Petitioner must
7 keep the court informed of any change of address and must comply with the court's orders in a
8 timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute
9 pursuant to Federal Rule of Civil Procedure 41(b).

10 5. Leave to proceed in forma pauperis is **GRANTED**.

11 **IT IS SO ORDERED.**

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13 Dated: May 7, 2018.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE